

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT P. SMITH, III, CASE NO. 1:11-cv-317-LJO-MJS (PC)

CASE NO. 1:11-cv-317-LJO-MJS (PC)

Plaintiff,

ORDER GRANTING MOTION TO RE-
TRANSFER CASE TO THE NORTHERN
DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

(ECF No. 9)

Defendants.

**CLERK TO TRANSFER CASE TO THE
NORTHERN DISTRICT OF CALIFORNIA**

Plaintiff Robert P. Smith (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action in the Northern District of California on July 6, 2010. (ECF No. 1.) On February 23, 2011, the Northern District ordered that the case be transferred to this Court based on the fact that most of the events at issue in this case occurred in the Eastern District and most of the Defendants reside in the Eastern District. (ECF No. 3.) The Northern District’s Transfer Order states that transfer is pursuant to 28 U.S.C. § 1406(a). (Id.)

"A prerequisite to invoking Section 1406(a) is that the venue chosen by the plaintiff must be improper." 14D Charles Alan Wright, et al., Federal Practice and Procedure § 3827 (3d ed. 2010); Bomanite Corp. v. Newlook Intern., Inc., 2008 WL 1767037, *5 (E.D.

1 Cal. April 16, 2008) ("If the original forum was a proper venue, § 1406(a) cannot apply.")
2 When, as in this case, the action involves a federal claim, venue is proper in any district
3 in which any defendant resides, if all of the defendants reside in the same state. 28 U.S.C.
4 § 1391(b) (emphasis added). The Transfer Order acknowledges that at least one
5 Defendant, Warden of Salinas Valley State Prison, resides in the Northern District.¹ (ECF
6 No. 3 at 2.) It appears that all the Defendants reside in California. (ECF No. 1.)

7 Because all of the Defendants reside in California and at least one resides in the
8 Northern District, venue is proper there and it was erroneous to order transfer pursuant to
9 Section 1406(a).

10 Accordingly, Plaintiff's Ex Parte Motion asking the Court to retransfer this case to
11 the Northern District of California is GRANTED. The Clerk shall transmit this case to the
12 Northern District of California.

13 IT IS SO ORDERED.
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15 Dated: April 18, 2011

16 /s/ Michael J. Teng
17 UNITED STATES MAGISTRATE JUDGE
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27 ¹ As Plaintiff points out in the instant Motion, at least four Defendants actually reside in the
Northern District. Additionally, a not insubstantial portion of the events occurred at Salinas Valley. (ECF
No. 9 at 3.)